

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Kim	Team: Squad #9	CCRB Case #: 202003753	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 7:26 PM	Location of Incident: Barclays Center	Precinct: 78	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 9:00 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/30/2020 9:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Mendez	05665	956922	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Mendez	Force: Police Officer Daniel Mendez used physical force against § 87(2)(b)	
B.POM Daniel Mendez	Force: Police Officer Daniel Mendez struck § 87(2)(b) with a baton.	
C.POM Daniel Mendez	Abuse: Police Officer Daniel Mendez interfered with § 87(2)(b)'s use of a recording device.	

Case Summary

On May 30, 2020, § 87(2)(b) filed this complaint with the CCRB via on-line website [BR01].

On May 29, 2020, at approximately 7:26 p.m., at the Barclays Center in Brooklyn, § 87(2)(b) was attending a Black Lives Matter Protest. § 87(2)(b) took out her cell phone and began filming an officer who was arresting an unidentified female. Police Officer Daniel Mendez of the 107th Precinct allegedly ran toward § 87(2)(b) and used his asp to push her (**Allegation A: Force; § 87(2)(g)**). PO Mendez used his baton to hit § 87(2)(b) once on the left side of her body (**Allegation B: Abuse of Authority; § 87(2)(g)**). In doing so, PO Mendez allegedly interfered with § 87(2)(b) recording the arrest on her cell phone (**Allegation C: Abuse of Authority; § 87(2)(g)**). § 87(2)(b) and PO Mendez then proceeded to walk away from each other. § 87(2)(b) was not arrested or issued a summons as a result of this incident.

§ 87(2)(b) provided cell phone footage of the incident [BR02]. A search for body-worn camera footage (BWC) for this incident yielded negative relevant results [BR03]. PO Daniel Mendez's camera ran out of battery which he noted in his memo book.

Findings and Recommendations

Allegation (A) Force: Police Officer Daniel Mendez used physical force against § 87(2)(b).

It is undisputed that PO Daniel Mendez pushed § 87(2)(b). § 87(2)(b) testified that on May 29, 2020, at approximately 7:26 p.m., she attended a Black Lives Matter protest at the Barclays Center in Brooklyn. § 87(2)(b) took out her cell phone and began filming an unidentified female who was being arrested by an officer. PO Mendez ran toward § 87(2)(b) took out his asp with his right hand and used it to push her in the chest. § 87(2)(b) was pushed backwards but did not fall. § 87(2)(b) attended the protest by herself [BR04].

PO Mendez testified that on May 29, 2020, at the Black Lives Matter protest at the Barclays Center in Brooklyn, he was standing behind metal barricades with approximately 200 police officers. PO Mendez was instructed to make sure protestors did not break through the barricades. PO Mendez estimated that there were approximately 1,000 protestors present. PO Mendez stated that he never removed his asp during the protest. PO Mendez had his baton out for the duration of the protest and used it approximately five times to push people away from the metal barricades. PO Mendez did this by holding his baton horizontally and placing one hand on each side of it. PO Mendez did not recall interacting with any females that matched the description § 87(2)(b) provided of herself. PO Mendez was shown cell phone footage of the incident taken by § 87(2)(b). PO Mendez identified himself in the footage but stated that the footage did not aid in his recollection of the incident [BR05].

PO Mendez's Memo Book from May 29, 2020 noted that his body-worn camera (BWC) died at 3:00 p.m. [BR06]. The Command Log from May 29, 2020 noted in an entry at 5:50 p.m. that PO Mendez's BWC had died [BR06].

§ 87(2)(b) provided cell phone footage that she took of the incident. At the beginning of the footage, two unidentified officers are leading an unidentified female away from the protestors with each officer holding one of her arms behind her back. § 87(2)(b) is approximately 10 feet away and begins to walk toward the unidentified officers and the unidentified female. § 87(2)(b) begins to walk by PO Mendez and an unidentified officer. A voice says, "back up, back up." Another voice says "ma'am, ma'am, ma'am." § 87(2)(b) is approximately one foot away from PO Mendez and the unidentified officer. At 00:04 seconds, PO Mendez extends his left hand and pushes § 87(2)(b) back [BR02].

Patrol Guide procedure 221-01 states that force can be used when it is rational to ensure the safety of a member of service and when it is reasonable to prevent someone's escape from custody. Any use of force must be reasonable under the circumstance. The list of factors to determine

reasonable use of force includes but is not limited to actions taken by the subject, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, and presence of hostile crowd or agitators [BR10].

§ 87(2)(g)

Allegation (B) Force: Police Officer Daniel Mendez struck § 87(2)(b) with a baton.

It is undisputed that PO Mendez struck § 87(2)(b) with a baton.

§ 87(2)(b) testified that a couple of seconds after PO Mendez pushed her, he swung his asp and hit § 87(2)(b) once. The asp strike contacted her left arm, ribs, and chest. § 87(2)(b) sustained a bruise to her arm and had the wind knocked out of her. PO Mendez stepped backward, and § 87(2)(b) walked away from PO Mendez [BR04].

In a follow up call conducted four months after her initial testimony, § 87(2)(b) testified that in the cell phone footage she provided, she was pushed at 00:04 seconds by PO Mendez and that he struck her with his asp at 00:06 seconds [BR12].

PO Mendez stated that he never struck anyone with his baton. PO Mendez stated that he never had his asp out during the protest [BR05].

The cell phone footage provided by § 87(2)(b) shows PO Mendez extend his left arm toward § 87(2)(b) who is approximately one foot away from him at 00:004 seconds. At 00:05 seconds, PO Mendez's right hand comes from above his shoulder down toward § 87(2)(b). There is a "thud" sound and the footage becomes blurry between 00:06 and 00:07 seconds. When the footage comes back into focus, § 87(2)(b) is approximately 10 feet away from PO Mendez. PO Mendez is holding his baton in his right hand. A voice asks, "Are you okay?" At 00:09 seconds, § 87(2)(b) walks back toward PO Mendez. Two unidentified officers step in between them. One extends his arm to PO Mendez's chest to stop him from moving toward § 87(2)(b). The other officer extends his arm in between the first unidentified officer and § 87(2)(b) [BR02]. The cell phone footage was also cut into a clip from 00:04 to 00:08 seconds and was slowed down to 6 frames per second [BR11].

Patrol Guide procedure 221-01 states that force can be used when it is rational to ensure the safety of a member of service and when it is reasonable to prevent someone's escape from custody. Any use of force must be reasonable under the circumstance. The list of factors to determine reasonable use of force includes but is not limited to the size of the subject in comparison to the member of service (MOS), actions taken by the subject, presence of hostile crowd or agitators, number of subjects in comparison to MOS, and immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders [BR10].

§ 87(2)(b) was approximately one foot away from PO Mendez when his right hand came down toward her. There was a thud sound consistent with a baton hitting a person. After the thud, the footage became momentarily blurry and § 87(2)(b) was suddenly a significant distance from PO Mendez. PO Mendez was seen holding his baton in his right hand. PO Mendez stated that he had his baton out throughout the protest, but only used it with two hands. § 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Daniel Mendez interfered with § 87(2)(b)'s use of a recording device.

It remains disputed whether PO Mendez interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) testified that when she took her phone out to film the arrest of the unidentified female, PO Mendez ran at her, pushed her and hit her with his asp causing her to move backward and have the wind knocked out of her [BR04].

PO Mendez testified that there were hundreds of people present recording the protest. PO Mendez never told anyone to stop recording the protest. PO Mendez never interfered with anyone recording the protest [BR05].

Cell phone footage provided by § 87(2)(b) showed § 87(2)(b) attempt to walk past PO Mendez and an unidentified officer toward the unidentified female who was being arrested. PO Mendez pushed and struck § 87(2)(b) with his baton causing her to move backward and the footage to become blurry [BR02].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Daniel Mendez has been a member of service for six years. During his tenure he has been the subject of three allegations in one prior complaint. § 87(2)(g)
 - CCRB 201608465 contained an allegation of Abuse of Authority: Other-Detention, which was substantiated and resulted in formalized training.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation as it was related to a 2020 police brutality protest.
- According to the New York City Office of the Comptroller, § 87(2)(b) had not filed a Notice of Claim regarding this incident as of August 26, 2020 [BR08].
- According to the Office of Court Administration (OCA), § 87(2)(b) has no criminal conviction history in New York City [BR09].

Squad No.: 9

Investigator: Noah Kim Investigator Kim 10/29/2020
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 11/5/2020
Signature Print Title & Name Date

CCRB Case # 202003753

Reviewer:

Signature

Print Title & Name

Date